one of his subordinate officers told him that the plaintiff was no longer in the employ of the P.S.A. This monthly return list is prepared with the approval of PW1 and is meant for the general information of all members. In detail, it shows the complement of the force, the officers suspended and the respective duties of the various officers.

Under cross-examination, PW1 was asked why the plaintiff's name was not deleted from this duty list. He replied that he was not aware and when further asked as to why he did not query the plaintiff's suspension his reply was that it had slipped his notice. From the evidence, there is no doubt that the defendants did not terminate the employment of the plaintiff and that his name appeared in their records up to March 1979 as being "suspended": In other words, the plaintiff had been under suspension from July 1974 to March 1979.

The defendants elected not to give any evidence.

Now the plaintiff in this case was acquitted after the disciplinary proceedings in July 1975. He was never informed by the defendants whether or not he would be reinstated or whether they were going to dismiss him. Again through his solicitors enquiries were made as to his position and for almost two years a satisfactory reply could not be obtained from the defendants. Even as late as August 1977 the solicitors for the defendants were not in a position to state whether the plaintiff was still in the employ of the defendants or not — AB26. The plaintiff even approached two Members of Parliament for their assistance but they appeared reluctant to intervene although one of them did suggest to him that he should resign. Despite his acquittal the plaintiff's name still remained in the defendants records as having been under suspension; his suspension was never removed and it was only in April 1979 that PW1 was informed that the plaintiff was no longer in their employ and only then was the plaintiff's name removed from the records; his services were never terminated.

In my view, owing to the fact that the plaintiff's services were never terminated by the defendants as their own records show and that he was still in their employ up to the end of March 1979, he is entitled to his salary from the date of his suspension i.e. July 1974 up to and including March 31, 1979. There will accordingly be judgment for the plaintiff for the sum of $35,419 and costs.

Claim allowed.

Solicitors: *J.B. Jeyaretnam & Co.; Rodyk & Davidson.*

V.S.T. LETCHME v. K.N.V. GOPAL

[A.C.J. (Rajah J.) November 9, 1979]

[Singapore — District Court Appeal No. 56 of 1979]

Family Law — Divorce — Whether husband still liable to pay wife maintenance after dissolution of marriage — Women's Charter (Cap. 47), ss. 60 & 62(1).

Women's Charter — Scope of s. 62(1) of Women's Charter (Cap. 47).

On November 20, 1976 the appellant in this case filed a petition for divorce against her husband on the ground of his adultery. There was no prayer in the petition for maintenance. On December 28, 1976 she started maintenance proceedings under section 60 of the Women's Charter against her husband. On March 7, 1977 there was a consent order that the husband pay her monthly as from March 1, 1977 through the Registrar of the Subordinate Courts, the sum of $80 for her maintenance.

The appellant's petition was heard on June 27, 1977. The Decree Nisi in her favour was made absolute on October 7, 1977. The Maintenance Order was not brought to the attention of the Judge. In the meantime the husband had been paying $80 per month. He stopped payment as from October 1978 and started proceedings on March 15, 1979 under section 62(1) of the Women's Charter. He applied for a rescission of the Maintenance Order since his marriage to the appellant had been dissolved.

The wife appealed.

Held, allowing the appeal: where the husband is the erring party and the wife the innocent one, the law is clear and explicit that there is a liability on the part of the husband to maintain his wife whether before or after divorce.

Cases referred to:-

(1) *Plunkett* v. *Plunkett* [1937] 3 All E.R. 736.

(2) *Wood* v. *Wood* [1957] 2 All E.R. 14.

(3) *Bragg* v. *Bragg* [1925] P. 20.

DISTRICT COURT APPEAL.

Tan Chin Siong for the appellant.

Tan Sri Syed Esa Almenoar for the respondent.

Cur. Adv. Vult.

Rajah J.: The respondent (husband) and the appellant (wife) were married on March 21, 1970. Sometime in January 1972 she discovered that her husband was cohabiting with another woman and had a child by her, and in consequence she left the matrimonial home on January 20, 1972.

On November 20, 1976 the Legal Aid Bureau filed a petition on her behalf for the dissolution of her marriage on the ground of her husband's adultery. There was no prayer in the petition for maintenance. The petition stated that there had been no previous proceedings in any court with reference to her marriage either by herself or her husband. However, on December 28, 1976 she started maintenance proceedings under section 60 of the Women's Charter (Cap. 47 of 1970 Revised Edition) against her husband in the Magistrates' Court and on March 7, 1977 there was a consent order that the husband pay her monthly as from March 1, 1977, through the Registrar of the Subordinate Courts, the sum of $80 for her maintenance.

Her petition for dissolution of marriage, which was uncontested, was heard on June 27, 1977 when a decree nisi to be made absolute in 3 months was pronounced in her favour. The maintenance order ob-

tained in the Magistrate's Court was not brought to the attention of the judge. The decree nisi was made absolute on October 7, 1977.

In the meantime the husband had been paying her $80 per month. He stopped payment as from October 1978 and started proceedings on March 15, 1979 under section 62(1) of the Women's Charter on the basis that, "Since the marriage to my former wife was dissolved and the decree was made absolute I therefore pray that the said maintenance order be rescinded as it deems fit in accordance with section 62(1) of the Women's Charter."

Section 62 of the Women's Charter reads: —

"62.—(1) On the application of any person receiving or ordered to pay a monthly allowance under this Part and on proof of a change in the circumstances of such person, his wife or child, or for other good cause being shown to the satisfaction of the court, the court by which such order was made may rescind the said order or may vary it as it deems fit.

(2) Without prejudice to the extent of the discretion conferred upon the court by subsection (1) of this section the court may, in considering any application made under this section, take into consideration any change in the general cost of living which may have occurred between the date of the making of the order sought to be varied and the date of the hearing of the application."

From this judgment the wife now appeals. The ground for the appeal is that the learned Magistrate erred in law in the interpretation of section 62(1) of the Women's Charter when he decided that the husband, who at the date of the hearing was no longer her husband, was entitled under the said section 62(1) to rescission of the maintenance order merely because the appellant (wife) and the respondent (husband) had ceased to be wife and husband.

At the outset of his judgment the learned Magistrate in his grounds of decision says that, "the issue in this case is as regards the liability of the complainant (husband) to continue to maintain the respondent (wife) who since the order absolute was no longer the wife of the complainant" (10E of the Record). He deals with this question towards the end of his judgment (13B) as follows: "Section 60 of Part VII of the Women's Charter is very clear. As for a woman who wished to claim for maintenance for herself, the operative words in subsection 1 of section 60 are 'Any *married* women whose *husband* (emphasis on italicised words is mine). This pre-supposes a special relationship between the woman and the man, that is, that there must exist a subsisting marriage between them. Of course, other factors must be proved to establish the culpability of the husband." So far I am with the learned Magistrate, except perhaps that I, myself, would have preferred "liability" to "culpability". But when he goes on immediately thereafter to say, "It therefore follows that where this special relationship has come to an end and where the woman is no longer the wife of the man, there no longer exists the liability to maintain the woman by her husband" we have to part company. Where the husband is the erring party and the wife the innocent one, and such are the facts in the instant case, the law is clear and explicit that there is a liability on the part of the husband to maintain his wife whether before or after divorce. It is his misconception of the law that has, in my view, led the learned Magistrate to misconstrue section 62(1). His reasoning seems to be as follows: —

(i) To qualify for an order under section 60 of the Women's Charter there must be subsisting the relationship of husband and wife;

(ii) If this relationship ceases to exist as when a decree nisi has been made absolute then the basis on which the order under section 60 was made has gone;

(iii) If the basis for the order has gone then it follows that the order must go with it;

(iv) If therefore a husband applies for a rescission after a decree nisi has been made absolute the court by which such order was made *must*, as a matter of law, rescind the order.

This is much too narrow and simplistic an approach to the problem and does not take into consideration a number of matters: —

(i) That under section 62(1) of the Act, the court "may rescind the said order or may vary it as it deems fit". So that it is not mandatory on the court to rescind or vary, as the case may be, but the court has a discretion in the matter;

(ii) That the liability of an erring divorced husband to maintain his divorced wife does not end when the marriage is finally dissolved;

(iii) That as against an erring husband, a wife has a remedy for her maintenance and in seeking to enforce this remedy she can elect either to go to the Subordinate Courts or to the High Court depending on whether the maintenance sought is (1) the primary and only relief she is seeking or (2) whether it is ancillary to proceedings, under Part IX of the Women's Charter, affecting her marital status. If it is the former she can only use the Subordinate Courts as her forum, if the latter then the High Court is her forum.

The case of *Plunkett* v. *Plunkett*[1] (Divisional Court) seems to me very much in point, particularly as the changed circumstances put forward in the appeal by the husband was that the marriage had been dissolved and that the relationship of husband and wife no longer existed. The facts in this case are sufficiently similar to the instant case and are worth setting out in some detail. The *Plunkett* case was an "appeal on behalf of the husband, John Edward Plunkett, from the refusal of the Carlisle Justices on April 2, 1937, to vary a maintenance order for 30s. per week, made by consent on February 6, 1931 in favour of Martha Muriel Plunkett, his wife. At the hearing on October 14, 1935, of a summons by the wife in respect of arrears of maintenance, the justices made a committal order to be suspended on payment of £50, the justices accepted an offer by the parents of the husband to pay £50 of the arrears, and an undertaking to make the husband an allowance of 15s. per week, and further varied the original order by reducing the weekly payment ordered from £1 10s. to 15s., "which sum is to be paid by the parents of the complainant (the husband) they having given an undertaking so to do." On July 13, 1936, the wife was granted a decree nisi of dissolution on the ground of the husband's

adultery. The decree nisi was made absolute on February 15, 1937. The husband thereupon applied to discharge or vary the maintenance order, basing his application on the facts of the dissolution of the marriage and of the inadequacy of his wages, viz. £2 5s. 3d. per week, to support his present wife and their two children. The justices refused the application, stating that they saw no reason to alter the present order. Thereafter the husband's parents ceased to pay the allowance of 15s. per week.

The husband appealed, on the grounds (i) that the circumstances in which the parents gave a voluntary undertaking to the court to pay 15s. per week had undergone a complete change by reason of the alteration in the status of the parties, and (ii) that the order for 15s. per week was excessive, having regard to the husband's means and responsibilities." (page 737).

The appeal was dismissed by the Divisional Court, and in the course of his judgment, Sir Boyd Merriman had this to say: "At present the only two circumstances which have been put forward to justify a reduction of the sum are that the marriage has been dissolved since October 1935 and that the parents are refusing to pay. It is quite plain, under the decision of this court in *Bragg* v. *Bragg* [1925] page 20 which has been consistently followed, that a *mere* dissolution of marriage does not *of itself* operate to dissolve a maintenance order" (emphasis are mine) (page 738 CD). From the learned Magistrate's notes it would appear that the *Plunkett case* and that of *Wood* v. *Wood*[2] were not brought to his attention. The Court of Appeal case of *Wood* v. *Wood* approved *Bragg* v. *Bragg*[3] (see page 29 B and C) and decide that on the true construction of section 7 of Summary Jurisdiction (Married Women) Act, 1895 dissolution of marriage, whether by decree of an English or a foreign court and whether at the suit of the husband or the wife, did not of itself put an end to a maintenance order, and the discretion under section 7 of the Act to vary a maintenance order therefore survived a dissolution of the marriage (see particularly page 23 G and H and page 29 C).

Section 7 of the English Act reads: —

"A court of summary jurisdiction acting within the city, borough, petty sessional or other division or district, in which any order under this Act or the Acts mentioned in the schedule hereto, or either of them, has been made, may, on the application of the married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the court at any time, alter, vary, or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made, so that the same do not in any case exceed the weekly sum of two pounds. If any married woman upon whose application an order shall have been made under this Act, or the Acts mentioned in the schedule hereto, or either of them, shall voluntarily resume cohabitation with her husband, or shall commit an act of adultery, such order shall upon proof thereof be discharged."

The appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *C.S. Tan & Co.; Almenoar & Co.*

MALAYSIAN REPORTS

LAU HEE TEAH v. HARGILL ENGINEERING SDN. BHD. & ANOR.

[F.C. (Raja Azlan Shah C.J., Salleh Abas F.J. and Abdoolcader J.) July 10 and August 9, 1979]
[Ipoh — Federal Court Civil Appeal No. 149 of 1978]

Hire-purchase — Loader — Faults in machine necessitating repairs and replacement of parts — Breach of warranty — Hire-purchase agreement rescinded — Counterclaim for hire and for labour and spare parts — Hire-purchase Act, 1967, ss. 6(3), 7, 8(1), 15(5), 17 & 18(2).

Contract — Fraudulent Misrepresentation — Non-disclosure — Whether intended to deceive — Burden of proof where fraud alleged — Contract Act, 1950, s. 17.

Practice and Procedure — Appeal — Findings of fact by trial judge — Whether appellate court can interfere — Appeal record badly prepared.

Evidence — Burden of proof where fraud alleged in civil case.

In this case the appellant had entered into an agreement on August 14, 1968 to take a loader on hire-purchase as hirer with the first respondent as dealer and the second respondent as owner. He was given a written guarantee by the first respondent for a period of six months against faulty parts and for the supply of spare parts. The machine developed faults when put to use and this necessitated repairs and replacement of some parts. The appellant alleged that certain fraudulent misrepresentations were made to him which led to his entering into the hire-purchase agreement and he purported to rescind the contract of sale. The machine was re-possessed by the first respondent on behalf of the second respondent on October 6, 1969 as six instalments under the hire-purchase agreement were due. The appellant instituted proceedings for declarations that the contract of sale had been rescinded, for the refund of money paid by him and for damages for breach of warranty by the respondents. The respondents traversed these allegations and the first respondent counterclaimed for the payment of moneys due to it under the Hire-Purchase Act and for work done and spare parts supplied to the appellant. The learned trial judge gave judgment for the appellant against the first respondent for breach of warranty and undertaking in the sum of $2,250, dismissed the appellant's claim against the second respondent and on the first respondent's counterclaim awarded the sum of $17,772.24 under section 15(5) of the Hire-Purchase Act, 1967 and a further sum of $202.10 for the cost of articles supplied but not under the warranty relating to faulty parts. The appellant and the first respondent appealed and cross-appealed against the decision of the learned trial judge.

Held, dismissing the appeal and counter-appeal: (1) there was no active duty on the first respondent's part to inform the appellant of the year of manufacture of the machine and the fact that it had been involved in a minor accident in a previous demonstration. These two matters were not material in the sense that non-disclosure was intended to deceive the appellant or to induce him to enter into the hire-purchase transaction;

(2) the breach of warranty against faulty parts contained in the written guarantee of the first respondent did not give rise to a right to rescind the hire-purchase agreement but to a claim for damages. The right of action for damages would lie only against the first respondent;

(3) on the facts the learned judge was correct in finding that that it was never represented to the appellant that the machine was in fact manufactured in 1968;

(4) the learned judge was also right in concluding that the machine in question was new and not secondhand merely because it had been used once previously for demonstration and had been involved in a minor accident and that there was therefore no misrepresentation by the first respondent on this point;

(5) there was a breach by the first respondent of the warranty contained in the written guarantee but this did not entitle the appellant to rescind the agreement but only to damages therefor;